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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/798,786	03/10/2004	Robert A. Van Tassel	ENDOV-67986	5624

24201 7590 11/28/2006

FULWIDER PATTON  
6060 CENTER DRIVE  
10TH FLOOR  
LOS ANGELES, CA 90045

EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 11/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/798,786	<b>Applicant(s)</b> VAN TASSEL ET AL.	
	<b>Examiner</b> Roy D. Gibson	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 51-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 51-66, 68-71 and 73 is/are rejected.
- 7) ☒ Claim(s) 67 and 72 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 51, 54, 58-63 and 65-66 are rejected under 35 U.S.C. 102(a) as anticipated by Trauner et al. (5,913,884). Trauner et al. disclose a method of strengthening tissue of a subject by administering a low dose of photodynamic therapy along with an agent which absorbs the radiation emitted and which together hastens healing of wounds by inducing fibrosis (col. 2, lines 15-65, col. 4, lines 14-65, col. 7, lines 21-60 and including a wavelength of 700 nm (1 nm from near infrared or IR as disclosed in col. 9, lines 3-21 which inherently would provide the same result as 701 nm).

Further to claim 61, the examiner maintains that administering a photoactivatable agent to a subject as disclosed by Trauner et al., inherently results in the agent being taken up by an adventitial area of a blood vessel which inherently results in increasing the adventitial area.

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 51 and 53-60 are also rejected under 35 U.S.C. 102(e) as being anticipated by Laufer et al. (6,488,673). Laufer et al. disclose a method of strengthening tissue of a subject comprising the steps essentially as claimed as applied to target region is found in the bronchi except for the limitation of claim 52 wherein X-ray irradiation is used (col. 9, lines 44-52, col. 11, lines 8-38), col. 16, lines 30-53, col. 26, line 38-col. 27, line 3).

Note the disclosure in col. 11, lines 20-30, that light energy in combination with a photodynamic agent is used to damage airway tissue and induce fibrosis so as to strengthen the airway.

Claims 61-66 and 68-71 and 73 are rejected under 35 U.S.C. 102(e) as being anticipated by Laufer et al. (6,488,673). Laufer et al. disclose a method of applying heat to the inner wall of a vessel which inherently heats the outermost connective tissue of the vessel (adventitial area of the tissue) essentially as claimed except for irradiating the site of an aneurysm externally using an external light delivery source (claims 67 and 72 and col. 9, lines 44-52, col. 11, lines 8-38), col. 16, lines 30-53, col. 26, line 38-col. 27, line 3).

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Claims 51, 57, 58 and 60 are rejected under 35 U.S.C. 102(e) as anticipated by Saadat et al. (6,120,520). Saadat et al. disclose an apparatus and method to form a controlled degree of scar tissue (inducing fibrosis) with the combination of RF energy and a bioactive agent (col. 3, lines 20-28, col. 4, lines 13-37 and lines 58-61, col. 6, lines 25-35, col. 8, line 61-col. 9, line 5 and col. 10, claim 3).

***Claim Rejections - 35 U.S.C. § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Laufer et al. Although Laufer et al. fail to include X-rays in the list of sources of energy (col. 11, lines 18-25) it would have been obvious to one of ordinary skill in the art that X-rays with even higher energy photons than UV rays would be effective in heating tissue as required.

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***Allowable Subject Matter***

Claims 67 and 72 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

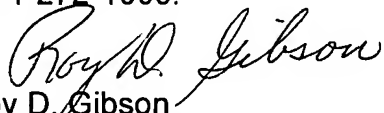
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Roy D. Gibson  
Primary Examiner  
Art Unit 3739

November 21, 2006